

## Forest Service, USDA

## § 218.23

to achieve one or more of the following: Relief from hazards threatening human health and safety; mitigation of threats to natural resources on NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration.

(c) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the consideration by the Chief or Associate Chief, additional information may be requested from the responsible official. The determination that an emergency situation does or does not exist is not subject to administrative review under this part.

(d) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the proposed project or activity, the proposed action shall not be subject to the predecisional objection process and implementation may proceed as follows:

(1) Immediately after notification (see 36 CFR 220.7(d)) when the decision is documented in a Decision Notice (DN).

(2) Immediately after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2) when the decision is documented in a Record of Decision (ROD).

(e) *Notification.* The responsible official shall identify any emergency situation determination made for a project or activity in the notification of the decision (see 36 CFR 220.5(g) and 220.7(d)).

### **§ 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.**

The legal notice and opportunity to comment procedures of this subpart apply only to:

(a) Proposed projects and activities implementing land management plans for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities implementing land management plans for which a draft or supplemental environmental impact statement (EIS) is prepared and notice and comment pro-

cedures are governed by 40 CFR parts 1500 through 1508;

(c) Proposed amendments to a land management plan that are included as part of a proposed project or activity covered in paragraphs (a) or (b) of this section which are applicable only to that proposed project or activity;

(d) A proposed project or activity for which a supplemental or revised EA or EIS is prepared based on consideration of new information or changed circumstances; and

(e) Proposed research activities to be conducted on National Forest System land for which an EA or EIS is prepared.

### **§ 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.**

The legal notice and opportunity to comment procedures of this subpart do not apply to:

(a) Any project or activity categorically excluded from documentation in an environmental assessment or environmental impact statement.

(b) Proposed land management plans, plan revisions, and plan amendments that are subject to the objection process set out in 36 CFR part 219, subpart B;

(c) Proposed plan amendments associated with a project or activity where the amendment applies not just to the particular project or activity but to all future projects and activities (see 36 CFR 219.59(b));

(d) Proposed projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220;

(e) Determinations by the responsible official, after consideration of new information or changed circumstances, that a correction, supplement, or revision of the EA or EIS is not required;

(f) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216); and

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(g) Proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act.

[78 FR 18497, Mar. 27, 2013, as amended at 79 FR 44293, July 31, 2014]

### § 218.24 Notification of opportunity to comment on proposed projects and activities.

(a) *Responsible official.* The responsible official shall:

(1) Provide legal notice of the opportunity to comment on a proposed project or activity implementing a land management plan.

(2) Determine the most effective timing and then publish the legal notice of the opportunity to comment as provided for in paragraph (c)(2) of this section.

(3) Promptly provide notice about the proposed project or activity to any individual or entity who has requested it and to those who have participated in planning for that project.

(4) Accept all written comments on the proposed project or activity as provided for in § 218.25(a)(4).

(b) *Content of legal notice.* All legal notices shall include the following:

(1) The title and brief description of the proposed project or activity.

(2) A general description of the proposed project or activity's location with sufficient information to allow the interested public to identify the location.

(3) When applicable, a statement that the responsible official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the proposed project or activity as provided for in § 218.21.

(4) For a proposed project or activity to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (see § 218.25(a)(2)); as newspaper publication dates may vary, legal notices shall not contain the specific date.

(5) For a proposed project or activity that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days fol-

lowing the date of publication of the notice of availability (NOA) in the FEDERAL REGISTER (see § 218.25(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(6) A statement that only those who submit timely and specific written comments regarding the proposed project or activity during a public comment period established by the responsible official are eligible to file an objection.

(7) The responsible official's name, title, telephone number, and addresses (street, postal, facsimile, and email) to whom comments are to be submitted and the responsible official's office business hours for those submitting hand-delivered comments (see § 218.25(a)(4)(ii)).

(8) A statement indicating that for objection eligibility each individual or representative from each entity submitting timely and specific written comments regarding the proposed project or activity must either sign the comments or verify identity upon request.

(9) The acceptable format(s) for electronic comments.

(10) Instructions on how to obtain additional information on the proposed project or activity.

(c) *Publication.* (1) Through notice published annually in the FEDERAL REGISTER, each Regional Forester shall advise the public of the newspaper(s) of record used for publishing legal notices required by this part.

(2) Legal notice of the opportunity to comment on a proposed project or activity shall be published in the applicable newspaper of record identified in paragraph (c)(1) of this section for each National Forest System unit. When the Chief is the responsible official, notice shall also be published in the FEDERAL REGISTER. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit written comments on a proposed project or activity to be analyzed and documented in an EA. The publication date of the NOA in the FEDERAL REGISTER is the exclusive means for calculating the time to submit written comments on a proposed